THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.18739 OF 1998
AND
WRIT PETITION NO. 21061 OF 1998

Date: 19.09.2007

Between:

APSRTC Employees Union, Regd. No. 215, Rajampet Depot.

…. Petitioner.

And

The Vice Chairman & Managing Director, APSRTC, Musheerabad, Hyderabad and two others.

…

Respondents.

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.18739 OF 1998
AND
WRIT PETITION NO. 21061 OF 1998

COMMON ORDER:

The question which arises for consideration in both these writ petitions is the same and as such they were heard together and are now being disposed of by a common order. The action of the respondents, in imposing a penal wage cut of 7 days pay, is questioned in this writ petition as arbitrary, illegal and without jurisdiction.

The employees of the A.P. State Road Transport Corporation, (APSRTC in short) are said to have gone on a lightening strike to have their pending demands resolved. A notice was issued calling upon them to show cause as to why a penal wage cut should not be imposed upon them. On the ground that they did not submit their explanation, the respondents directed that their wages for seven days in lieu of notice be retained treating the period of absence as without wages.

Section 1(6) of the Payment of Wages Act, 1936 provides that the Act would apply to wages payable to an employed person in respect of a wage period if such wages for that wage period does not exceed Rs.1600/- per month. The amendment of sub-section (6) by Act 41 of 2005 with effect from 09.11.2005, has no

application to the facts of the present case since the order imposing the penal wage cut is much prior to the amendment. Section 9 of the Payment of Wages Act relates to deduction for absence from duty and under sub-section (1) thereof, deductions may be made under clause (b) of sub-section (2) of Section 7 only on account of an employed person abstaining from work from the place or places where, by the terms of his employment, he is required to work, such absence being for the whole or any part of the period during which he is so required to work. Under sub-section (2), the amount of such deduction shall in no case bear to the wages payable to the employed person in respect of the wage-period for which the deduction is made a larger proportion than the period for which he was absent bears to the total period. Under the proviso to Section 9(2), if ten or more employed persons acting in concert absent themselves without due notice, and without reasonable cause, such deduction from any such person may include such amount not exceeding his wages for eight days as may by any such terms be due to the employee in lieu of notice.

In the present case a penal wage cut of seven days wages was imposed in exercise of the powers conferred under the proviso to Section 9(2). The jurisdictional facts which are required to be ascertained before the power, under the proviso to Section 9(2), can be exercised is that (1) ten or more employed persons must have absented themselves without due notice and (2), such absence must be by such persons acting in concert and (3) the absence should be without reasonable cause. It is only if these conditions are satisfied can a deduction be made from the wages of the persons employed including such amount not exceeding

eight days wages.

Sri G. Vidyasagar, learned Counsel for the petitioner would submit that since, admittedly, none of the employees employed in A.P.S.R.T.C. draw wages less than Rs.1600/- per month, the provisions of the Payment of Wages Act are not applicable to them and as such the power, under the proviso to Section 9(2), could not have been exercised, imposing on them a penal wage Act of seven days wages. Learned Counsel would place reliance on **Tyre Retreading Shop Committee Vs. APSRTC**[1]

Smt. W.V.S. Rajeswari, learned Standing Counsel for the respondent corporation would, on the other hand, rely on a Division Bench judgment of this Court in **Divisional Secretary, APSRTC National Mazdoor Union, Sangareddy Vs. APSRTC**[2] to contend that even if the provisions of the Payment of Wages Act were held inapplicable, the employer would, nonetheless, have the power to impose such a penal wage cut, since stoppage of work in a public utility would cause lot of inconvenience and paralyze the entire days activity besides causing inconvenience to the public which cannot be compensated. Learned Standing Counsel would submit that, in view of the law laid down by the Division Bench, reliance placed on behalf of the petitioners on the judgment in **Tyre Retreading Shop Committee**[1] was misplaced.

I n **Divisional Secretary, APSRTC National Mazdoor Union, Sangareddy**[2] the question which arose for consideration was whether the action of the second respondent in ordering deduction of wages for eight days from the salaries of 69 conductors was in accordance with law. A similar contention, that the provisions of the Payment of Wages Act were inapplicable as

the employees were drawing salary of more than Rs.1600/- per month, was raised therein and it is in this context that the Division Bench observed thus:

"…….We find that the Corporation is justified in imposing penal wage cut for eight days as the stoppage of work by the employees of the petitioner-Union caused great inconvenience to the public. The members of the petitioner-Union should have noticed that they are working in an organization which is meant for public utility. Stoppage of their work will definitely cause lot of inconvenience resulting in paralyzing the entire day's activity and causing inconvenience to the public which cannot be compensated. Having undertaken to serve the organization, which is of public utility in nature, stoppage of work without reasonable cause amounts to indiscipline. In such an event the authority which has right to hold disciplinary enquiry will have definitely right to impose a punishment in the nature of penal wage cut. Even if the provisions of payment of Wages Act have no application to the case of the members of the petitioner-Union , still the authority, who passed the order, imposing penal wage cut, has got right and jurisdiction to impose such penalty Such an action cannot be said to be illegal or without jurisdiction. The points now raised in this writ petition might not have been brought to the notice of their lordshi9ps at the tie of disposal of W.A. No. 3 of 1995. If that was done, the finding would have been otherwise. Therefore, that judgment is not of any help to the petitioners….."

It is necessary to note that the aforesaid judgment of the Division Bench was considered in **Tyre Retreading Shop Committee**[1] and the learned judge, placing reliance on a Division Bench judgment of this Court in Writ Appeal No. 3 of 1995 and batch dated 08.04.1996, observed thus:

"…….It is also true that the decision of this Court in WP No. 4346 of 1992 dated 13-11-1992 and the decision in WA No. 3 of 1995 and batch, dated 8-4-1996 were brought to the notice of the Division Bench. But it is required to notice that the Division bench having referred to the said judgment has not expressed any opinion taking any different view other than the one taken by the learned single Judge and the Division bench in WP No. 4346 of 1992 and WA no. 3 of 1995 and Batch, respectively. It is also required to notice that the judgment of the Division Bench in WP No. 12017 of 1992 and batch, dated 2-5-1997, was not at all brought to the notice of the Division bench in Divisional Secretary's case (supra). There is not even a reference to Section 1 (6) of the Act, in the said judgment. Therefore, it cannot be said that the Division Bench in Divisional Secretary's case (supra), has taken a different view other than the one taken by a learned

single Judge and two division Benches of this Court. The observations made in Divisional Secretary's case that "the points now raised in this writ petition might not have been brought to the notice of their Lordships at the time of disposal of WA No. 3 of 1995. If that was done, the finding would have been otherwise", is required to be understood in the contextual facts op that case. The judgment in Divisional Secretary's case (supra) is required to be understood in the background of its own facts. That apart, it is brought to my notice that the mazdoor Union has preferred a Special leave Petition against the said judgment and the same is stated to have been admitted and pending consideration by the Apex court.

For all the aforesaid reasons, I do not find any merit in the submissions made by the learned Standing Counsel for the respondent-Andhra Pradesh State Road transport Corporation. The judgment in divisional Secretary's case (supra) lends no support to the contentions put-forth by the learned Standing Counsel. The law on the subject is very clear. A bare reading of sub-section (6) of Section 1 of the Payment of Wages Act, 1936, itself, makes the legal position abundantly clear……"

The Learned Single Judge, in **Tyre Retreading Shop Committee**[1], held that the judgment in **Divisional Secretary, APSRTC National Mazdoor Union, Sangareddy**[2] was required to be understood in the background of its own facts. It is not even the case of the respondents before this Court that any of the employees of the Corporation draw salary of Rs.1600/- per month. It is also not in dispute that in such an event, in view of Section 1(6), the provisions of the Payment of Wages Act are inapplicable. While the submission that, even in the absence of a specific provision, the disciplinary authority would, nonetheless, have the power to impose a punishment, cannot be said to be without merit, imposition of punishment for such absence can only be in accordance with APSRTC Conduct and Appeal Regulations which rules are statutory in character. It is not even the case of the respondents that disciplinary action was taken against the members of the petitioner-Union in accordance with the statutory rules/regulations prescribed for imposition of punishment. As

such the respondents are not entitled to impose the penalty of a penal wage cut for seven days. Viewed from any angle the impugned orders are liable to be quashed. Needless to state that the order passed by this Court will not preclude the respondents from taking action against its employees, who are members of the petitioner-Union, if they are so permitted by law.

Both the writ petitions are allowed. However, in the circumstances, without costs.

Date: 19 .09.2007 RAMESH RANGANATHAN, J

MRKR

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[1] 1999(5) ALD 619

[2] 1997(6) ALD 530(DB)